IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3579 of 1988

with

SPECIAL CIVIL APPLICATION No 1456 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

JUVANSINH AMIRBHAI DABHI

Appearance:

1. Special Civil Application No. 3579 of 1988
MR PRANAV G DESAI for Petitioner
MR AK CLERK for Respondent No. 1

2. Special Civil ApplicationNo 1456 of 1992
MR MUKESH H RATHOD for Petitioner
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/05/2001

COMMON CAV JUDGEMENT

1. Gujarat State Road Transport Corporation through The Divisional Controller - Surat, petitioner has filed this present petition challenging the judgement and award dated 26-11-1987 passed by the Presiding Officer, Second Labour Court, Surat in Ref.(LCS) No.645/1982. The learned Judge was pleased to reinstate the respondent, Juvansinh Amirbhai Dabhi with all the emoluments of service. However, the Labour Court did not allow the salary between the date of dismissal till the award.

2. The facts arising out of this petition are as under:

2.1 It is stated in the petition that petitioner is the State Road Transport Corporation constituted under the Section 3 of the Road Transport Corporations Act, 1950. The Corporation has been established to offer advantages to the public, trade and industry by the development of road transport and for the desirability of coordinating any form of road transport with any other form of transport, and also for the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein.

2.2 It is further stated in the petition that the respondent was working as a conductor in the petitioner-Corporation. It is also stated in the petition that on 18-6-1975 at about 10.30 a.m., the respondent declared that the ticket blocks worth Rs.9,155.00 had been lost. After checking it was found that the respondent had been given blocks of the said tickets and, thereafter, on different dates in the way bill those tickets had been shown to be sold by the respondent. It is also stated in the petition that the amount of sale of those tickets were not deposited with the Corporation and even though the tickets were sold and it was deliberatively reported by the respondent that the ticket blocks had been lost and thereby the respondent has committed offence of cheating.

2.3 It is stated in the petition that a charge-sheet was issued to the respondent on 30-7-1975, a copy of which is annexed to the petition as Annexure "A". On the same day i.e. 30-7-1975, a reply to the said charge-sheet was given by the respondent, a copy of which

is annexed to the petition as Annexure "B".

2.4 It is stated in the petition that an inquiry was held against the respondent by the petitioner and opportunities were given for examining as well as for cross-examining of the witnesses of the Corporation. It is also stated in the petition that the respondent has not chosen to cross-examine the reporter who had reported against the respondent. It was also an admitted fact that when the ticket blocks were sold, the amount of Rs.7557.00 was not deposited with the Corporation by the respondent.

2.5 It is further stated in the petition that it was almost admitted by the respondent that the respondent has misappropriated the said amount. After considering the reply as well as the evidence on record, the competent authority passed an order, dismissing the respondent from services of the Corporation.

2.6 Being aggrieved by the order passed by the competent authority, dismissing the respondent, which was passed after issuing two show-cause notices, the respondent preferred 1st and 2nd Appeals and both the appeals were rejected by the competent authority of the Corporation.

2.7 It is further stated in the petition that thereafter the respondent preferred an application before the Assistant Labour Commissioner under Section 10(1)(c). The Assistant Labour Commissioner, by his order dated 5-9-1982, referred the aforesaid matter to the Labour Court, Surat (Presiding Officer of 2nd Labour Court, Surat). Before the Labour Court, the workman also submitted his case and filed his reply and ultimately the Second Labour Court, Surat, after hearing both the sides, was pleased to pass an order for reinstatement of the workman afresh without continuation of service and without backwages. A copy of the award has been annexed at Annexure "C" to the petition.

2.8 Being aggrieved by the aforesaid judgement and award passed by the Presiding Officer, Labour Court, Surat in Ref.(LCS) No.645 of 1982, the petitioner has preferred the present petition before this Court.

3. Mr.Pranav Desai, learned Counsel along with Ms.P. Vora, appeared on behalf of the petitioner-Corporation. The learned Counsel for the petitioner contended that in this case, the learned Labour Judge ought to have seen

that it has been an admitted position that respondent has misappropriated an amount of Rs.7557.00 and charges are being proved against the respondent.

4. It is further submitted by the learned Counsel for the petitioner that the learned Labour Court ought to have seen that full opportunity has been given to the respondent for leading evidence but no evidence has been led by the respondent. The learned Counsel also submitted that the learned Labour Judge ought to have seen that the misconduct committed by the respondent is of grave nature and the respondent ought not to have been reinstated in the services of the petitioner. It is further submitted that the learned Labour Judge has erred in invoking Sec.11A of the Industrial Disputes Act in this behalf.

5. Mr.G.K.Rathod, learned Counsel is appearing on behalf of the respondent. He has stated that I should not adjudicate the matter on the merits of the matter, because on behalf of the respondent, he has filed an affidavit dated 15-3-2001. In the affidavit, it has been stated that the respondent was reinstated in service as a conductor and was appointed at Adajan Surat Rural Depot. Thereafter, he was transferred to Ahmedabad Division and posted at Bavla Depot. He has submitted that after the reinstatement from 23-3-1988 to 30-6-1999, which date he was superannuated from the Corporation, there was no default or any misconduct committed by him and after the reinstatement, his record is good and clean and spotless.

6. He has further submitted that after the award of reinstatement while admitting the petition no interim stay has been granted by this Court and, therefore, award has been fully implemented and he has retired from service on 30-6-1999 and received all retirement benefits. He has also submitted that an employee who has been reinstated in service in pursuance to the award passed by the Labour Court and worked during the period till the date of retirement in that circumstances on the basis of principal of Quantum Merits employee is entitled the salary of that period which he had worked and on the basis of last pay employee is also entitled all the retirement benefits. Such retirement benefits cannot be withdrawn or recovered by the employer. He has relied upon judgement of the Hon'ble Apex Court in the case of G.S.R.T.C. Vs. U.A.Malek reported in 2001(1) Labour Law Journal p.180. In that case Shri U.A.Malek respondent was employed as conductor and he was charged with misappropriation of the money of the Corporation by not issuing tickets to the passengers on certain dates.

Thereafter, an enquiry was held and he was dismissed from service. The respondent raised a dispute under the Industrial Disputes Act, 1947 and the Labour Court allowed the reference partially directing the appellant to provide employment to the respondent afresh making it clear that he will not be entitled to any back wages. On the matter being carried by way of a writ petition to the High Court against the said award, the same having been dismissed. Being aggrieved and dissatified with the said judgement, the Corporation filed appeal before the Hon'ble Appex Court. The Hon'ble Apex Court in para 2 of the said judgement observed as under:

> "It is now brought to our notice that the respondent has been in service in the establishment of the appellant from the year 1982 onwards pursuant to the award of the Labour Court. In the circumstances, we do not think it would be appropriate to upset the present state of affairs when the respondent has been in employment for such a long period. Appeal is, therefore, dismissed."

7. In view of the peculiar facts and circumstances of the case, I do not decide this matter on merits of the matter only on the ground that the respondent employee was reinstated and he has already retired from the service of the petitioner-corporation and the respondent has already been paid the retirement benefits, the matter has become infructuous in this behalf. Accordingly, Special Civil Application No.3579/1988 is disposed of as having become infructuous. Rule is discharged. No order as to costs.

8. In view of the above order, Special Civil Application No.1456/1992 is also disposed of as having become infructuous. Rule is discharged. No order as to costs.

03-05-2001 (K.M.Mehta, J.)

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